

**APTS****ORIGINAL**

April 9, 2001

Roy Stewart  
 Chief, Mass Media Bureau  
 Federal Communications Commission  
 445 12th Street, SW  
 Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

Re: Ex Parte Filing, MM Docket No. 00-167 /

Dear Mr. Stewart:

On December 18, 2000, the Association of America's Public Television Stations (APTS) and the Public Broadcasting Service (PBS) filed their joint comments in the above captioned proceeding. APTS and PBS presented a number of policy positions.<sup>1</sup> First, in light of its exemplary track record of providing quality educational programming for children, public television requested its continued exemption from children's television reporting and public disclosure requirements in the digital world. Second, public television generally supported proposals that would encourage funding arrangements with commercial broadcasters if such arrangements (a) are structured to ensure adequate funding and sufficient distribution of quality, noncommercial educational children's programming and services; (b) are directed toward national, regional or local noncommercial television entities that have demonstrated a commitment to high quality children's noncommercial educational programming; and (c) are designed to encourage innovation and responsiveness to local community needs. Lastly, public television sought clarification that any change to the definition of "commercial matter" for purposes of children's programming should not interfere with the legitimate ability of public television stations to air promotional programming for non-profits, as authorized by statute and the Commission's rules.

On January 17, 2001, a coalition of state broadcasters filed reply comments in this proceeding that misconstrued the position of public television regarding the definition of "commercial matter."<sup>2</sup> This coalition cited our comments for the proposition that "any change in the definition [of "commercial matter"] would create difficulties for public broadcasters, who are now arguing that any narrowing of the definition should not apply to them."<sup>3</sup> The coalition concluded that "a change in the definition of "commercial matter" would create the added complication of requiring separate definitions for commercial and noncommercial broadcasters—likely leading to an unworkable situation."<sup>4</sup>

<sup>1</sup> Joint Comments of the Association of America's Public Television Stations and the Public Broadcasting Service, MM Docket No. 00-167 (December 18, 2000).

<sup>2</sup> See Joint Reply Comments of Named State Broadcasters Associations, MM Docket No. 00-167 (January 17, 2001).

<sup>3</sup> *Id.* at 13.

<sup>4</sup> *Id.*

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This, however, is not the position of public television. Contrary to the suggestion above, APTS and PBS have not asked for an exemption from commercial limits associated with children's programming. Public television stations are currently allowed, by statute and by Commission regulations, to air promotional programming for non-profit entities.<sup>5</sup> APTS and PBS have simply requested that the Commission clarify that any change in the definition of "commercial matter" for purposes of children's programming not unintentionally interfere with the legitimate ability of public television stations to air promotional programming for non-profit entities in association with non-children's programming. Public television has no intention of advocating an exemption from commercial limits associated with children's programming and would not support any advocacy of such an exemption.

Should you have any further questions or concerns about this matter, please do not hesitate to contact me.

Sincerely,



Marilyn Mohrman-Gillis  
Vice President, Policy and Legal Affairs

cc: Kim Matthews,  
Policy and Rules Division, Mass Media Bureau

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<sup>5</sup> Although Section 399B of the Communications Act forbids public television stations from broadcasting advertisements, 47 U.S.C. § 399B(b)(2), the same statute defines "advertisement" to mean "any message or other programming material which is broadcast or otherwise transmitted in exchange for remuneration, and which is intended (1) to promote any service, facility, or product offered by any person who is engaged in such offering for profit" 47 U.S.C. § 399B(a)(emphasis supplied). The statute makes clear that where promotional material does not fit the definition of "advertisement," public television stations "shall be authorized to engage in the offering of services, facilities, or products in exchange for remuneration." 47 U.S.C. § 399B(b)(1). The Commission has interpreted this to mean that public television stations may air promotional material in exchange for remuneration on behalf of nonprofit organizations, because such activity does not constitute an advertisement. "[P]romotional announcements on behalf of nonprofit organizations (including their services, facilities, or products), do not qualify as "advertisements" and are generally not prohibited." Chicago Educational Television Association, Licensee Station WTTW(TV), Letter, DA 95-2116, 10 FCC Rcd 12018, 1 Com. Reg. (P&F) 1110 (October 31, 1995).